

deceased wife. The bill, we notice, has been withdrawn in order that its terms may be altered. As first introduced it contains only two sections, which are as follows:—

1. "Marriage is permitted between a man and the sister of his deceased wife or the widow of his deceased brother, provided there be no impediment by reason of affinity between them according to the rules and customs of the church, congregation, priest, minister or officer celebrating such marriage.

2. "All such marriages thus contracted in the past are hereby declared valid, cases (if any) pending in courts of justice alone excepted."

This measure has been long and strenuously advocated in England (where a society exists for promoting the desired change in the law), and it will be remembered that last Session, in the House of Lords, it received the support of both the Prince of Wales and the Duke of Edinburgh. (See 2 Legal News, p. 184.) The arguments urged against these marriages are well known, but we have never been able to consider them perfectly satisfactory.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, February 3, 1880.

SIR A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ.

KANE (plff. contesting below), Appellant, and
RACINE (*tiers saisi* below), Respondent.

Sale in fraud of creditors—Nullity may be invoked by creditor who was not a party thereto, by a pleading, on contestation of opposition or of declaration of garnishee, or on intervention, &c.—When all the parties to the fraudulent deed need not be summoned.

The appeal was from a judgment dismissing a contestation of a declaration made by a garnishee.

On the 13th November, 1877, Marie Louise Lesage (Mad. Fournier), a debtor of appellant, sold a piano and other articles, to the value of \$428, to the respondent, in payment of a debt due by her to respondent.

The appellant being informed that Mad. Fournier was making away with her effects in fraud of her creditors, caused a *saisie-arrêt* before judgment to be issued on the 16th November.

The respondent, summoned as *tiers saisi*, declared that he owed the defendant nothing, and had nothing belonging to her in his possession. The appellant proceeded against the defendant and obtained judgment on the 4th April, 1878, for \$226.16. He also contested the declaration of respondent, alleging that he had in his possession a piano which belonged to the defendant.

The respondent admitted by his answers that he had the piano, but alleged that he had bought it from [defendant, and he produced a writing *sous seing privé*, by which the piano and certain other articles were sold to respondent by defendant in payment of what she owed him.

The appellant then asked that the sale of the piano be declared null, as having been made by defendant in fraud of her creditors' rights at a time when she was insolvent, as respondent was aware.

The evidence showed that defendant became an insolvent under the Act, about two months after the sale. She then had several thousand dollars of liabilities, and no assets, except some bad debts. It also appeared that at the time respondent bought the piano, the defendant was notoriously insolvent. The respondent admitted that for a month or two he had been endeavouring to collect his claim, and that, learning that the defendant had sold articles to other creditors in order to pay them, he had taken the piano and other effects in settlement of his claim, he giving for the effects their full value.

Sir A. A. DORION, C.J., said fraud was fully established, both by the notorious insolvency of the defendant and by the circumstances of the sale, which were sufficient to show that respondent knew, or had reason to know, that his debtor was insolvent and *en déconfiture*. The Court below did not decide the question of fraud. It dismissed the contestation of the appellant on the ground that he could not by an answer ask for the nullity of the sale *sous seing privé* made in fraud of his rights, that he should have resorted to an *action révocatoire*, and have called into the case all who were interested in contesting his demand.

Is it true that a creditor, against whom a contract made in fraud of his rights is set up, is obliged to bring a revocatory action to set it